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Co-Counsel for Debtors and

Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**DEBTORS' APPLICATION IN LIEU OF MOTION IN SUPPORT OF
ENTRY OF STIPULATION AND CONSENT ORDER
APPROVING LEASE TERMINATION AGREEMENT
WITH YSM-PONDEROSA, LLC**

TO: THE HONORABLE JUDGE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY JUDGE:

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned co-counsel, Cole Schotz P.C., and Kirkland & Ellis LLP and Kirkland & Ellis International LLP, respectfully state the following in support of this application (the “Application”), pursuant to D.N.J. LBR 9021-1(b), seeking the approval and entry of the proposed *Stipulation and Consent Order Approving Lease Termination Agreement with YSM-Ponderosa, LLC* (the “Proposed Stipulation and Consent Order”),² a copy of which is attached hereto as **Exhibit 1**, and respectfully state as follows:

1. On April 23, 2023 (the “Petition Date”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 24, 2023, the Court entered an order [Docket No. 75] authorizing procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). On May 5, 2023, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 218].

2. YSM-Ponderosa, LLC (“Landlord”) and Bed Bath & Beyond Inc. entered into that certain lease of nonresidential real property dated July 29, 2014 (the “Lease”) covering premises located at 195 Yale Street Market, Houston, Texas.

3. Following the Petition Date, the Debtors and Landlord negotiated and entered into a Lease Termination Agreement, the form of which is annexed as Exhibit “A” to the Proposed

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Proposed Stipulation and Consent Order or Lease Termination Agreement, as applicable.

Stipulation and Consent Order (the “Lease Termination Agreement”). Among other things, the Lease Termination Agreement, provides as follows:³

- (a) Landlord has asserted that the Lease was terminated prior to the Petition Date. Tenant has disputed the termination of the Lease. To the extent that the Lease has not already been terminated and subject to the terms and conditions contained in the Lease Termination Agreement, Landlord and Tenant agree that the Lease shall be terminated effective July 31, 2023 (the “Outside Termination Date”). Subject to Section 4 and 6 of the Lease Termination Agreement, Landlord expressly reserves all rights and remedies with respect to the date of termination of the Lease, and nothing in Lease Termination Agreement shall preclude Landlord from asserting that termination of the Lease was effective prior to the Outside Termination Date;
- (b) as consideration Landlord shall (i) pay Debtor the sum of \$25,000, (ii) waive all pre-petition claims and waive all post-petition claims of Landlord under the Lease solely and exclusively due from Debtor, and (iii) waive any claim for damages arising from the rejection of the Lease under 11 U.S.C. § 502(b)(6) as consideration for this Agreement; and
- (c) Landlord and Debtors agree to mutually release and waive claims against the other solely to the extent set forth in the Lease Termination Agreement and subject to the limitations described therein.

4. The Landlord and the Debtors respectfully request the Court’s consideration as soon as permitted.

5. The Debtors submit that the Proposed Stipulation and Consent Order is in the best interest of the Debtors and their estates.

6. This Application is submitted pursuant to D.N.J. LBR 9021-1 (b) in lieu of a motion in support of the Debtors’ request that the Court enter the Proposed Stipulation and Consent Order as presented.

³ The terms described in this paragraph are for illustrative purposes only. To the extent there is any inconsistency between the terms set forth in the Lease Termination Agreement and the terms described herein, the Lease Termination Agreement shall control in all respects.

7. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Stipulation and Consent Order, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: August 1, 2023

/s/ Michael D. Sirota

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